



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

REGULAR FIRST APPEAL NO. 750 OF 2018 (PAR)

BETWEEN:

1. SMT. M. BHAGYA
D/O LATE C. MUNIRUDRAPPA
AGED ABOUT 58 YEARS
R/AT. NO.21/42, 16TH CROSS
16TH MAIN, PADMANABHANAGARA
BENGALURU - 85
2. SMT. M. ANNAPOORNA
D/O LATE C. MUNIRUDRAPPA
AGED ABOUT 58 YEARS
R/AT SOMESHWARA TEMPLE STREET
NAGARTHPET, VIJIPURA
DEVANAHALLI TALUK
BENGALURU RURAL DISTRICT-562 110
3. SMT. M. SUBHADRA
D/O LATE C. MUNIRUDRAPPA
AGED ABOUT 54 YEARS
R/AT KALIKAMBA ROAD
DEVANAHALLI TOWN
BENGALURU RURAL DISTRICT-562 110
4. SMT. M. UMADEVI
D/O LATE C. MUNIRUDRAPPA
AGED ABOUT 51 YEARS
R/AT NO.1331, AGRAHARA
TUMAKURU TOWN
TUMAKURU DISTRICT-572 101





5. M. MANJUNATH
S/O LATE C. MUNIRUDRAPPA
AGED ABOUT 48 YEARS
R/AT MARUTHINAGARA
DODDABALLAPURA TOWN
BENGALURU RURAL DISTRICT-561 203

6. M. RUDRAPPA
S/O LATE C. MUNIRUDRAPPA
AGED ABOUT 49 YEARS
R/AT NO.222/1, 6TH CROSS
VENKATAPURA NEW EXTENSION
KORAMANGALA
BENGALURU-560 034

...APPELLANTS

(BY SMT. S.B. LAKSHMI, ADVOCATE)

AND:

1. M. PARAMASHIVAIAH
SINCE DEAD BY LR's

1(A) SMT. HEMAVATHI
W/O LATE M. PARAMASHIVAIAH
AGED ABOUT 51 YEARS

1(B) MR. MITHUN
S/O LATE M. PARAMASHIVAIAH
AGED ABOUT 26 YEARS

1(C) MR. LOKESH
S/O LATE M. PARAMASHIVAIAH
AGED ABOUT 24 YEARS

RESPONDENTS 1(A) TO 1(C) ARE
R/AT GANIGARA PETE
OPPOSITE TO NEW KARAGA TEMPLE
DODDABALLAPURA TOWN-561 203
BENGALURU RURAL DISTRICT



2. P.R. NATARAJ
SINCE DEAD BY LR's

2(A) MR. NAVEEN KUMAR N
S/O LATE P.R. NATARAJ
AGED ABOUT 45 YEARS

2(B) MR. NITHIN KUMAR
S/O LATE P.R. NATARAJ
AGED ABOUT 35 YEARS

RESPONDENTS 2(A) TO 2(B) ARE
R/AT NO.34/7, 10TH MAIN
14TH CROSS, LAKKASANDRA EXTENSION
WILSON GARDEN
BENGALURU-560 027

3. SMT. S. MANJULA
D/O C. SHIVARUDRAPPA
AGED ABOUT 59 YEARS
R/AT, NO.60, 2ND FLOOR
10TH MAIN, WILSON GARDEN
BENGALURU-30

...RESPONDENTS

(BY SRI. K. SHIVASHANKAR A/W
SRI. AMARA NARAYANA SWAMY, ADVOCATES FOR R2
[A AND B] AND R3;
VIDE ORDER DATED 29.04.2025 NOTICE TO R1 [A TO C]
IS HELD SUFFICIENT BY WAY OF PAPER PUBLICATION)

THIS RFA IS FILED UNDER SEC.96 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 3.3.2018 PASSED IN OS
NO.4087/2005 ON THE FILE OF THE XXV ADDL. CITY CIVIL
AND SESSIONS JUDGE, BANGALORE, PARTLY DECREETING THE
SUIT FOR PARTITION.



THIS APPEAL, COMING ON FOR FURTHER HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL JUDGMENT

This appeal is filed against the judgment and decree dated 03.03.2018 in O.S.No.4087/2025 on the file of XXV Additional City Civil Judge, Bengaluru.

2. The suit is one for partition and separate possession. The suit is decreed holding that the plaintiffs are entitled to 6/7th share in the consideration amount received by defendant No.1, from defendants No.2 and 3, pursuant to sale of item No.1 of the suit schedule property.

3. The suit is not pressed in respect of item No.2 property on the premise that there is already a settlement in respect of the said property.

4. Aggrieved by the aforementioned judgment and decree, the plaintiffs are in appeal.

5. Certain facts borne out from the pleadings are as under:



5.1 The property in question originally belonged to C.Munirudrappa, the propositus, who died on 01.09.1987. His wife Smt. Lakshmi Devamma, died on 23.06.1994. The couple had seven children. Plaintiffs and defendant No.1 are the children of Munirudrappa and Lakshmi Devamma.

5.2 The suit is filed on the premise that, the plaintiffs have 6/7th share in respect of two properties. Defendants No.2 and 3 are the purchasers of the property from defendant No.1.

5.3 Defendants No.2 and 3 would contend that defendant No.1 had the power of attorney from all the plaintiffs to sell the property, as such, the registered sale deeds dated 14.08.2003 and 23.09.2004 in favour of defendants No.2 and 3 in respect of item No.1 property are valid.

6. Learned counsel appearing for the plaintiffs/appellants would urge the plaintiffs led evidence. However, the plaintiffs are not cross-examined. Thereafter, defendant No.2 is examined as DW.1 and there is no cross- examination to the said DW.1. It is submitted that defendant No.1 did not lead any evidence.



7. Thus, it is the contention of the learned counsel for the plaintiffs that the defendants have not established the execution of the power of attorney. Hence, the Trial Court could not have decreed the suit holding that there is a valid transfer. Trial Court ought to have granted share in the property to the plaintiffs, is the submission.

8. Learned counsel for the appellants would also urge that during the pendency of this appeal, there was an interim order against the respondents and said interim order was violated. In violation of the interim order, respondents No.2 and 3 and their children have put- up the structure, as such the matter was referred to the Trial Court to consider the application under Order XXXIX Rule 2A of the Code of Civil Procedure. And on consideration of the said application, the Court has come to the conclusion that there is violation of the interim order. Thus, it is urged that appropriate orders have to be passed for violating the interim order passed by this Court.

9. Learned counsel appearing for defendants No.2 and 3 would urge that, the plaintiffs validly executed a power of attorney in favour of defendant No.1 and defendant No.1



executed registered sale deeds in favour of defendants No.2 and 3 on 14.08.2003 and 23.09.2004, as such, the suit is not maintainable.

10. It is submitted that, the power of attorney is duly established and the plaintiffs have not cross-examined DW.1/defendant No.2 who has tendered evidence relating to execution of power of attorney as well as sale by the power of attorney holder in favour of defendants No.2 and 3.

11. It is also urged that, since the sale transactions are valid, the plaintiffs at the most can claim consideration amount from defendant No.1 who was authorized to receive the sale consideration from defendants No.2 and 3 the purchasers.

12. It is further urged before the Court that, the interim order is not violated by defendants No.2 and 3. The evidence led on behalf of defendants No.2 and 3 were not being appreciated in proper perspective and the Trial Court erroneously came to the conclusion that defendants No.2 and 3 have violated the interim order.



13. Learned counsel for defendants No.2 and 3 would also urge that one of the defendants is no more and interim order was not communicated by the previous counsel and without knowing the prohibitory order relating to construction, the construction commenced by putting the pillars in the suit property. However, after coming to know about the injunction order, no construction has taken place.

14. The Court has considered the contentions raised at the Bar and perused the records.

15. Following points arise for consideration.

- (a) *Whether the plaintiffs/appellants establish that they have not executed the power of attorney in favour of defendant No.1?*
- (b) *Whether the Trial Court is justified in holding that respondents No.2 and 3 have violated the interim order passed by this Court?*

16. As already noticed, the PW-1 was not cross-examined by the defendants. DW1/defendant No.2 has examined himself before the Trial Court. However, DW-2 did not offer himself for the cross-examination. In the aforementioned circumstances, the Trial



Court has discarded the evidence of DW1/defendant No.2.

17. Learned counsel appearing for the plaintiffs/ appellants urged that, the power of attorney executed in favour of defendant No.1 was not a power of attorney authorising defendant No.1 to alienate the suit schedule property, but was only a power of attorney wherein the defendant No.1 was authorized to get the sale deed executed in his favour on behalf of the plaintiffs from BDA in respect of suit schedule property which was allotted to the father of the plaintiffs and defendant No.1. The Court has perused the power of attorney which is marked at Exhibit-D1. The clause No.3 of the power of attorney reads as under:

"3. To dispose of the Schedule property or any part of it to any person or institution by way of Mortgage, sell, lease, alienate, etc., and receive the consideration thereof, in the.....(sic)"

18. The said clause would in an unmistakable term indicates that, the power of attorney executed by the plaintiffs authorises defendant No.1 to alienate the property.

19. Learned counsel appearing for the plaintiffs/ appellants would place reliance on the judgment of the Apex Court in



M. S. Ananthamurthy and Another vs J. Manjula Etc.¹ and also the judgment of the Apex Court in ***Suraj Lamp and Industries Private Limited vs State of Haryana & Another²***.

20. Referring to these judgments, it is urged that the power of attorney in question requires registration.

21. It is to be noticed that the Power of Attorney marked at Exhibit-D1 is later discarded by the Trial Court because DW.1/Defendant No.2 has not subjected himself for the cross examination. The entire evidence of DW1/defendant No.2 is discarded.

22. This being the position, the Trial Court could not have placed reliance on the said power of attorney to come to the conclusion that the power of attorney authorises the defendant No.1 to execute the sale deed. The plaintiffs have not disputed the execution of the power of attorney. However, urged that there is no clause authorising the agent to sell the property.

23. Thus, the Court is required to consider the power of attorney only after admitting the same in evidence. It is made clear

¹ (2025) 10 SCC 596

² (2012) 1 SCC 656



that, execution of power of attorney is not in dispute. The question is whether the said power of attorney created an interest in the property in favour of the agent and required registration.

24. Though the defendant No.2/DW1 produced the power of attorney, the same cannot be looked into as he did not subject himself for the cross-examination. This being the position, the Trial Court could not have come to the conclusion that the power of attorney is valid without the power of attorney being placed on record as required under law.

25. It is also submitted that during the pendency suit, subsequent developments have taken place. According to the defendants No.2 and 3 the plaintiffs No.1 to 4 and 6 have executed a confirmation deed and admitted the execution of the sale deeds in favour of defendants No.2 and 3. To this effect, the memo is filed by the defendants No.2 and 3 and plaintiffs have filed objection to the said memo.

26. Since the subsequent developments are not brought on record in the pleadings, the parties are permitted to make necessary amendments in their pleadings to incorporate the subsequent developments by moving necessary application before



the Trial Court.

27. Learned counsel for the appellants at this juncture submits that the application filed before this Court under Order XXXIX Rule 2A of the Code of Civil Procedure will not be pressed by the appellants. Said submission is placed on record and based on said submission, that application is dismissed as not pressed.

28. Under these circumstances, without getting into the merits of the matter, the impugned judgment and decree passed by the Trial Court are set aside and the matter is remitted to the Trial Court for fresh consideration.

29. Hence, the following:

ORDER

- (i) The appeal is ***allowed in part.***
- (ii) The impugned judgment and decree dated 03.03.2018 in O.S.No.4087/2025 on the file of XXV Additional City Civil Judge, Bengaluru are set aside.
- (iii) The matter is remitted to the Trial Court for fresh consideration in accordance with law.



- (iv) The parties shall appear before the Trial Court on **26.03.2026.**
- (v) Parties are permitted to substitute the legal representatives of the deceased parties.
- (vi) Since PW-1 was not cross-examined, defendants No.2 and 3 are permitted to cross-examine the plaintiffs.
- (vii) Since the defendants did not lead evidence, the defendants are also be permitted to lead evidence in support of the case.
- (viii) Both parties are permitted to amend their pleadings relating to the alleged registered confirmation deed which is registered during the pendency of the proceeding.
- (ix) Based on said pleadings, the Trial Court shall also frame issues and record findings on the said issues.
- (x) Both parties shall co-operate for early disposal. Since it is noticed that the suit is of the year 2005 and matter is remitted to the Trial Court for fresh consideration, the parties shall co-operate for early disposal of the proceeding and shall not seek unnecessary adjournments.



- (xi) The Trial Court shall endeavour to dispose of the suit within 6 months from the date of the appearance of the parties.
- (xii) It is made clear that except recording the finding that execution of power of attorney is admitted, no other finding is given on the validity or the scope of the power of attorney. Same shall be considered based on the evidence led by the parties.
- (xiii) Registry to send back the Trial Court records forthwith.
- (xiv) No order as to cost.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

GVP/CHS
List No.: 1 Sl No.: 49